

2012

# Flawed by Design

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## Recommended Citation

Peters, Erika, "Flawed by Design" (2012). *Volume 20 - 2012*. Paper 13.  
<http://preserve.lehigh.edu/cas-lehighreview-vol-20/13>

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*The United States is suffering  
a crisis that is unavoidable  
under the current system.  
When two thirds of released  
prisoners return to prison  
within three years, the  
criminal justice system  
must be questioned. This  
paper examines crucial  
components of the problem,  
including: the ideology behind  
imprisonment; biological  
factors of criminals; the  
fallacy of trusted evidence;  
corruption amongst those  
in charge; and the role of  
lawyers. Clearly, the United  
States criminal justice system  
contains inherent flaws and  
is in dire need of radical  
restructuring.*



# FLAWED BY DESIGN

*by Erika Peters*

Lady in the  
Attic (1)  
(detail)  
Kenny Barry

*“[J]ustice miscarries everyday, by doing precisely what we ask it to.”<sup>1</sup>*

**A**sk a resident of white suburbia if the United States Criminal Justice System is fair and righteous. More likely than not, s/he will commend the integrity of the system. Ask one of the 1,613,740 Americans incarcerated in a federal or state prison the same question and you are bound to elicit a contradictory response.<sup>2</sup> These are the individuals that serve on the other side, as subordinates of the acclaimed system. Some will tell you they are innocent, they are mistakenly there and the wrong person has been convicted. Others will argue their case is special, that the court overlooked their unique circumstances and that there are better alternatives to prison. Finally, an enlightened few will indicate that by its very nature, the system creates a unilateral trajectory towards injustice. Through this perspective, the United States Criminal Justice System is flawed by design and fundamentally miscarries justice, to varying degrees, on a regular basis. A key imperfection of the criminal justice system is the value it places on a punishment-oriented ideology over that of prevention and rehabilitation. The system does not seek to aid criminals in self-improvement nor assist them in becoming more lawful citizens; it merely operates as a means of “deterrence and incapacitation.”<sup>3</sup> This current approach asserts that the cure for crime is to “increase the costs of criminal activity” in an effort to dissuade illegal behavior.<sup>4</sup> Therefore, the threat of punishment is viewed as the sole means to control human conduct. While detained in over-capacitated prison systems, many inmates report sexual assault and irreparable emotional damage that ultimately causes violent and antisocial behavior upon reentry to society. In this process families are also affected, as chil-

dren are left without parent-figures or role models, and the remaining parents struggle alone. Massive imprisonment is causing more problems in the long run.<sup>5</sup> But once punishment is administered, will a criminal forever be discouraged and cured? According to recidivism statistics, sixty-six percent of released prisoners find themselves behind bars within three years.<sup>6</sup> This establishes that incarceration is not fulfilling its goal to cure criminals. In addition to the anguish caused by the prison environment, a large amount of criminals suffer from previously existing psychological disorders that may have attributed to their convicted offence. Studies support this, as “neuroscience is showing us that a great many crimes are committed out of compulsion—the offenders couldn’t help it.”<sup>7</sup> If criminals are impaired by biological factors out of their control, they need medical and remedial therapy that alleviates their symptoms and prevents future occurrences of crime. Transferring criminals in and out of prison is simply futile compared to rehabilitation. This proactive involvement can also be applied to those prisoners not suffering defined medical conditions, but who have evident

deemed just. It is arguably more just to use our resources to rehabilitate those in need, transforming them into upstanding and active citizens in the community, preventing further crime, and benefitting a greater number of people. Yet, the criminal justice system is told to punish and so it does. Another dysfunction within the United States Criminal Justice System which prohibits true justice from being served involves the usage of evidence and the portrayal of speculation as irrefutable fact. We live in a modern society where we are taught that science is truth. Anything that can be observed, proved in a lab, viewed with a microscope, solved with an equation or supported by a myriad of experiments and scholars is scientific and indisputable. Therefore, if scientific evidence is presented in court, the truth is revealed and the jury has an easy decision to make: an observation cannot be false, a fingerprint cannot be denied, and DNA cannot be argued. With this evidence, the system has provided a guaranteed method for evaluating a case and promoting justice. However, lineups are vastly inaccurate, fingerprints are subject to human error, and there is no such thing as a DNA

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behavioral problems. Those in the criminal justice system should examine the criminals more closely. They should learn who they are as people, find out why they do what they do, “instead of always just locking ’em up.”<sup>8</sup> But instead, America takes a fervent stance to be tough on crime; and in our current system, that is

“match.” We ask the system to provide us with evidence, and it does. However, evidence is not infallible.

Eyewitness accounts, at first thought, seem like an honest mode to arrive at a conclusion. If an eyewitness claims they are one hundred percent positive they know what they saw, a jury should be inclined to

believe them. After all, if they are certain they know what they saw and they trust their own vision, what is not to believe? Most people, especially eyewitnesses, would be surprised to discover the inaccuracy of these identifications. The case of Ronald Cotton serves as an illustrative example of an eyewitness account leading to the conviction of an innocent man. Jennifer Thomas-Cannino told the jury that during her half-hour long rape she “made a very concentrated effort to pay attention to the facial features” and anything else she could bring forth to police, pending her survival.<sup>9</sup> Even with her extreme devotion to memorizing the appearance of her attacker, she suffered from mental contamination after viewing multiple suspects. Her story is not uncommon. Recent studies have recognized the unreliability of these accounts, as demonstrated in an experiment in which only fifty-four percent of witnesses correctly identified the perpetrator in a staged lineup.<sup>10</sup>

What if the real perpetrator is missing from the lineup? Witnesses often believe that the perpetrator is there, and so they must select someone. Realistically, a lineup is not a multiple-choice question, and the true criminal may be absent. In another staged lineup experiment, this time devoid of the perpetrator, sixty-eight percent still chose a suspect. Yet witnesses who were incorrect in their selections were just as confident as those who identified the correct suspect, and jurors believe both groups equally.<sup>11</sup> The implications this has on the criminal justice system are massive. Eyewitness identifications, though presented as fact, are largely vulnerable to errors and contamination and should consequently not be considered solid proof in a trial.

The role of fingerprints as evidence should also be viewed with a similar caution. Fingerprints are analyzed with human eyes to determine if there is a fit between the fingerprints of a suspect and those left on

evidence linking to a particular crime. The dogma of this previously regarded “unsailable symbol of truth” was in question when twenty percent of agencies in the United States failed to identify prints correctly during an F.B.I. study.<sup>12</sup> That being true, it is slightly alarming that fingerprints conclusively incriminate a suspect on the basis of being fact.

Yet another form of evidence that is also widely misperceived is DNA. People are led to believe that DNA is sacred in regards to proving guilt or innocence when this is not necessarily the case. Prosecutors like to speak of a match that ties the defendant to the crime and automatically proposes a guilty verdict. In fact, forensic scientists have omitted the word match

from their vocabulary and instead describe a more accurate analysis, such as “similar” or “could have come from” or “is associated with.”<sup>13</sup> It is more precise to eliminate suspects based on DNA than it is to claim a fragment of a hair belonged to individual using nuclear DNA. But even as technology refines and develops in the forensic labs, it is being distorted in the criminal justice system. Lawyers tamper with and modify evidence to serve their best interests. DNA results have been overstated in strength and frequency, omitted if they conflicted, tested minimally, reported as conclusive when inconclusive and blatantly altered.<sup>14</sup> Of course, this is all hidden from the jury, who is only told there is a match and is utterly unaware

Graffiti, Gina Mason







Lady in the Attic (2), Kenny Barry

of any other possibility. Jurors need to be educated on the dependability of their evidence so they are not easily swayed by lawyers. We demand that the criminal justice system provides the jury with evidence in order to make an informed decision. No one can accuse the system of depriving the jury of evidence; however, their means of extracting, manipulating and presenting evidence to an uninformed jury can be accused of impeding justice. It can be reasoned that the structure of the United States Criminal Justice System is fundamentally flawed and inherently unjust. Police officers are given the mission to protect and serve the citizens in their community, but certainly not all citizens feel this obligation is being met. Police officers are given authority, which for some leads to a sense of entitlement and false belief that they are above the law. In a Cook County study conducted in 1987, ninety-two percent of judges, prosecutors, and public defenders claimed officers lie at least some of the time.<sup>15</sup> Along with verbal immoralities, police officer coercion has been known to take place. Criminal suspects at Area 2 in Chicago describe being bagged, electroshocked and repeatedly beaten by members of the police department seeking confessions.<sup>16</sup> Police officers are not necessarily intrinsically bad people, but their authoritarian role within the system can evoke abusive, insensitive, and cruel traits towards the prisoners. The Stanford Prison Experiment exhibited this phenomenon in 1971 so extremely that it was called off before it was even halfway completed. What was true in that controlled environment decades ago remains applicable. Officers meant to protect, serve and carry out justice can actually be detrimental for justice. Lawyers are also asked to carry out justice, but in an adversary court system known to follow the fight theory this goal may be unrealistic. Unlike a criminal justice system that functions under a truth theory,

where both sides are in active pursuit of the truth, the fight theory system is in pursuit of victory. The lawyers' loyalties are not to justice and truth but rather to their client for whom they must advocate zealously. Lawyers following the fight theory may purposely confuse the opposition's witnesses and make them seem hostile or unfavorable, and they may also refuse to allow evidence in that does not support their claim.<sup>17</sup> Lawyers will attempt to portray their client as worthy of sympathy by creating a completely false image. "Honest Abe" Dennison exemplified this tendency to rouse compassion by planting a bus ticket stub in the pocket of his Mercedes-owning defendant.<sup>18</sup> Fight theory has become dangerously excessive in sabotage and manipulation, corrupting an ideally just system. However, the lawyers are acting in accordance with their roles—their purpose is to win cases. We do ask our criminal justice system to provide an attorney to those who cannot afford one. This demand, too, causes injustices within the system. Those who need a

defendants feel hopeless about winning a trial and usually settle on a plea bargain to avoid a more severe punishment. These poverty-stricken individuals are at a great disadvantage in the system. Their representation in court is unfair because of the way the system is set up; there is evidently a need for more public defenders. Perhaps once this is achieved the playing field will become somewhat more level and justice will miscarry a great deal less.

Once you begin to question whether or not the United States Criminal Justice System is fair and righteous, continue to ask more questions. Take your pick of over 1.6 million incarcerated Americans and ask what their life has been like thus far. Was s/he a victim of a horrible childhood? How many times has s/he been locked up? Where is his/her family now? Have those in charge treated him/her harshly? Did s/he have a fair trial? Did his/her defense council even care? These are questions the majority of white suburbia could not answer because despite their perspective of the system, they have never been at the

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state-appointed Counsel are usually stuck with whomever they receive: "they are unable to buy their way out of trouble."<sup>19</sup> Unfortunately, public defenders often have an exorbitant amount of cases at one time (as many as one hundred) and can therefore not devote as much of themselves to each case as they would like.<sup>20</sup> They have minimal time to become acclimated with each client and construct a strong personal defense. As a consequence, many

mercy of the system. They believe in the American doctrine that you are innocent until proven guilty and that liberty and justice are truly available for all. But those that have been on the other side of the United States Criminal Justice System have seen the internal flaws. The system is engineered to produce inequalities and injustices that are inescapable for some; the United States Criminal Justice System is flawed by design.